

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RESEARCH FRONTIERS)	
INCORPORATED,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 13-1231-LPS
)	
E INK CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	

**STIPULATION AND [PROPOSED] ORDER STAYING
PLAINTIFF’S CLAIMS AGAINST CUSTOMER DEFENDANTS**

WHEREAS, Plaintiff Research Frontiers Incorporated (“RFI”) filed its complaint in the above-captioned action (the “Action”) on July 12, 2013 alleging that Defendants E Ink Corporation and E Ink Holdings (collectively, “E Ink”); Amazon.com, Inc. (“Amazon”); Sony Electronics Inc. and Sony Corporation (collectively, “Sony”); and Barnes & Noble, Inc. and barnesandnoble.com LLC (collectively, “B&N”) infringe U.S. Patent Nos. 6,606,185 and 5,463,491 (collectively, the “patents-in-suit”);

WHEREAS, RFI alleges that E Ink directly infringes the patents-in-suit through the manufacture, use, offer for sale, sale, and/or importation of E Ink products and/or electronic paper displays (“EPDs”) incorporating E Ink products;

WHEREAS, RFI alleges that Amazon, Sony, and B&N (collectively, “the Retail Manufacturers”) directly infringe the patents-in-suit through the manufacture, use, offer for sale, sale and/or importation of eReader and eBook devices incorporating E Ink-manufactured EPDs and/or EPD components;

WHEREAS, E Ink represents that, to the best of its knowledge after due inquiry, and as a material condition to RFI agreeing to this Stipulation, all relevant and discoverable technical information with respect to the patents-in-suit resides in the possession, custody and/or control of E Ink;

WHEREAS, a stay of RFI's present claims against the Retail Manufacturers subject to the stipulations herein will simplify the issues for trial;

WHEREAS, discovery in this case has not begun and a trial date has not been set;

IT IS HEREBY STIPULATED AND AGREED by the undersigned counsel, subject to the approval of the Court, that:

1. RFI's claims against the Retail Manufacturers for infringement of the patents-in-suit are stayed without prejudice to RFI's right to move to lift and/or modify such stay;
The present stay applies to the patents-in-suit only and will not automatically apply to any other RFI patents which may be asserted in this Action;
2. Notwithstanding the stay, RFI will be allowed to take damages discovery from the Retail Manufacturers following the filing of the parties' Joint Claim Construction Chart. RFI may also seek leave to obtain specific technical discovery from the Retail Manufacturers if the Retail Manufacturers have relevant technical information not available to E Ink with respect to the patents-in-suit;
3. Regardless of any stay, when the parties engage in settlement discussions, E Ink and the Retail Manufacturers will produce summary financial information for the accused products to assist RFI in assessing settlement;
4. The Retail Manufacturers agree to be bound by any decision with respect to infringement or noninfringement of the asserted claims of the patents-in-suit based on

- inclusion of the accused E Ink-manufactured EPDs and/or EPD components in the Retail Manufacturers' products accused of infringement in this Action;
5. The Retail Manufacturers agree to be bound by any decision in this Action with respect to validity or invalidity and enforceability or unenforceability of the asserted claims of the patents-in-suit, but RFI agrees that the Retail Manufacturers and E Ink shall have the right to contest infringement, validity and/or enforceability of the patents-in-suit in future proceedings unless, pursuant to Federal Circuit precedent on claim preclusion, RFI proves that the products accused of infringement in such future proceedings are "essentially the same" as the products adjudicated in this Action;
 6. E Ink agrees to indemnify the Retail Manufacturers, and to be responsible to RFI, for any damage award based on the allegations of the Complaint filed in this Action on July 12, 2013, though each Retail Manufacturer shall remain secondarily liable for the portion of any damage award attributable to that Retail Manufacturer's sales.

Nothing contained in this Stipulation shall be construed to diminish in any way a Retail Manufacturer's liability to RFI for any damage award attributable to that Retail Manufacturer's sales or other activity, or limit RFI's rights in any way to pursue its claims against the Retail Manufacturers;
 7. All defendants stipulate that RFI's agreement to the stay herein, with the consequence that the Retail Manufacturers' current obligations to answer or otherwise plead will be deferred indefinitely, will not be a basis to oppose RFI's right to amend its Complaint under Rule 15, Fed. R. Civ. P. or under the anticipated Scheduling Order in this Action; and

8. All defendants waive the defenses of: lack of personal jurisdiction, improper venue, insufficient process and insufficient service of process set forth in Rule 12(b), Fed. R. Civ. P. and agree not to seek a change of venue under 35 U.S.C. §1404.

/s/ George Pazuniak

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Dated: November 8, 2013

SO ORDERED this ____ day of _____, 2013.

United States District Judge

CERTIFICATE OF SERVICE

I, David M. Fry, hereby certify that on November 8, 2013, this document was served on the persons listed below in the manner indicated:

BY E-MAIL & HAND DELIVERY

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